

REMARKS

Claims 1-24, 31, and 32 are currently pending in this application, claims 25-30 having been withdrawn in the Response to Restriction Requirement dated June 9, 2003. In this Amendment, Applicant cancels claims 25-30, without prejudice or disclaimer, amends claims 1 and 31, adds new claim 32, and amends the specification to correct minor reference numeral errors and typographical errors. No new matter is added.

Initially, Applicant thanks Examiner Bushey for indicating that claims 13-24 are allowed and that claims 4-9 contain allowable subject matter.

Objections to the Specification

In the Office Action, the Examiner objected to the specification for containing informalities. Applicant amends the specification as suggested by the Examiner. Applicant respectfully submits that these amendments overcome the objections and add no new matter. Accordingly, Applicant respectfully requests withdrawal of the objections to the specification.

35 U.S.C. § 102 Rejection

Claims 1-3, 11, 12, and 31 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,764,315 to Brusa ("Brusa").

Applicant respectfully traverses this rejection. Claim 1 recites a unique system for mixing water with CO₂ to produce carbonated water including a tank, "wherein the tank is arranged at an acute angle with respect to a support surface." Brusa does not teach or suggest this recitation. Instead, Brusa discloses a cold water reservoir arranged perpendicular to a support surface. Indeed, Brusa fails to teach or suggest

the cold water reservoir 10 being arranged at any acute angle with respect to a support surface. Thus, for at least this reason, claim 1 is allowable over Brusa. Accordingly, Applicant submits that the § 102(b) rejection of claim 1 based on Brusa should be withdrawn. See Brusa, Fig.

Dependent claims 2-12 and 32 are also allowable at least for the reasons above regarding independent claim 1, by virtue of their dependency upon independent claim 1. Accordingly, Applicant respectfully requests withdrawal of the § 102(b) rejection of dependent claims 2, 3, 11, and 12.

Independent claim 31 recites a unique carbonator including "an inlet in the at least one wall of the tank configured to receive a supply of CO₂, the inlet opening into the headspace." Brusa does not teach or suggest this recitation. Instead, Brusa discloses the pipe 36 for supplying carbon dioxide to a chamber 22. See Brusa, Fig. and col. 2, lines 28-31. The pipe 36 extends below the low level sensor 32, and thus opens into the water. Id. Therefore, Brusa does not teach or suggest a CO₂ inlet opening into a headspace, as recited in claim 31. Accordingly, Applicant submits that claim 31 patentably distinguishes over Brusa and that the § 102(b) rejection of claim 31 based on Brusa should be withdrawn.

35 U.S.C. § 103 Rejection

Claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Brusa, in view of U.S. Patent Application Publication No. 2003/0012849 to Berson ("Berson"). Applicant respectfully traverses this rejection.

Claim 10 depends from independent claim 1 and, therefore, includes each of its features. Thus, for the reasons discussed above in connection with claim 1, Brusa also fails to disclose or suggest the features of claim 10.

Additionally, Berson fails to overcome the above-noted deficiencies of Brusa and is not relied upon for such teaching. Instead, Berson, like Brusa, discloses the tank 1 arranged perpendicular with respect to a support surface. See Berson, Figs. 1 and 6. Therefore, Berson does not teach or suggest a tank arranged at an acute angle with respect to a support surface. Accordingly, Applicant submits that the § 103 rejection of claim 10 should be withdrawn.

Summary

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

The Examiner is invited to telephone the undersigned at (202) 408-4157 if the Examiner deems that a telephone conversation would further the prosecution of the application.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.


FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 21, 2003

By: 
Michael L. Woods
Reg. No. 50,811

Attachments: Replacement Drawing Sheets (4 pages, Figs. 1-4)

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

1300 I Street, NW
Washington, DC 20005
202.408.4000
Fax 202.408.4400
www.finnegan.com